

REMARKS

Applicant has reviewed and considered the Office Action mailed on December 17, 2002, and the references cited therewith.

Claims 1-13 are now pending in this application.

Examiner Interview Summary

A series of telephone conferences was held between Examiner Lun-See Lao and the undersigned attorney on September 10, 2003 regarding the abandonment of this application for failure to reply to an Office Action. We discussed the fact that neither Applicant nor the undersigned attorney had received the Office Action, and that Applicant intended to file a petition to withdraw holding of abandonment, or in the alternative, petition to revive the application. A fax of pages 2-8 of the Office Action was faxed to the undersigned attorney by the Examiner. The conference was the result of a voice mail from the Examiner on September 3, 2003.

A Petition to Withdraw Holding of Abandonment under 37 C.F.R. 1.181(a) is being filed herewith. It should be noted that a notice of abandonment has not yet been received, but that the statutory time for reply to the Office Action dated December 17, 2002 has expired.

§103 Rejection of the Claims

Claims 1-3, 5-9, 11, and 13 were rejected under 35 USC § 103(a) as being unpatentable over Cooper (US 5,592,508). This rejection is respectfully traversed.

In the Response to Arguments section of the Office Action mailed 12/17/2002, it was stated that "different formats in Cooper represent different levels of quality in that video signals have higher quality than audio signals because the former have more data bits per packet than the latter." It appears that the Examiner is taking official notice of this fact. Applicant respectfully traverses this official notice and requests the Examiner to provide a reference that describes how the number of packets in video and audio signals relate to different quality audio signals. Absent a reference, it appears that the Examiner is using personal knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

Applicant also has a difficult time understanding the reasoning involved with the above statement. The statement appears to be equating video and audio signals in terms of quality. It is not understood how this can be done, and appears irrelevant in that the claims only refer to different quality of audio signals. The phrase "more data bits per packet" is confusing. It is not understood how the size of a packet relates to quality. Video inherently requires more bits for a given time than audio. However, even this statement is dependent on the size of the video images, as well as relative quality of each. Thus, more bits for video may not equate to more quality than audio. The statement in the Office Action has no probative value, and the rejection should be withdrawn.

In the response to arguments, the Examiner also indicates that Cooper mentions a personal computer at Col. 3, lines 21-41. It should be noted that Cooper merely mentions a "channel 9, including modulated radio frequency energy and optical energy such as fiber optics, storage, such as computer or other type floppy or hard disk or Optical disk or matrix." Thus, a computer floppy drive or computer hard disk may be used as a method of transmission. There is no teaching that a computer has the elements claimed in the claims as arranged in the claims as part of the computer system.

Claims 1-10 all route audio signals based on converter quality. No such teaching is found in Cooper. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation. In Cooper, "it is preferred that the format of the output signal match the format of the input signal" Col. 4, lines 11-12. Note that the formats are referenced. There is no discussion of conversion based on "desired converter quality". Formats in Cooper are equated to

“different types of signals, for example, digital, analog, audio and video.” Col. 5, lines 6-8. PAL digital video and analog NTSC might be connected via crosspoint switch 16. There is no suggestion that signals are routed based on audio quality of the signal in a personal computer.

Cooper relates to complex television systems, not to audio processing in a personal computer. The Office Action indicates that “Cooper teaches that a method of routing digital audio to a plurality of digital-to-analog converters in a personal computer...”. As indicated above, this is not the case. Cooper may refer to a computer floppy disk, but only in the context of providing an input signal. It does not teach a personal computer that has the elements as arranged in the claims. The rejection should be withdrawn.

Claim 12 was rejected under 35 USC § 103(a) as being unpatentable over Hewitt (US 5,896,291) in view of Cooper (US 5,592,508). Claim 12 references routing “the digital audio signals to a selected digital-to-analog converter based on desired converter quality.” The Office Action indicates that Cooper teaches a system for routing digital audio signal to a plurality of digital-to-analog converters in a personal computer...” As indicated above, this is not the case. As such, the combination does not teach or suggest each and every element of the invention as claimed.

Claims 4 and 10 were rejected under 35 USC § 103(a) as being unpatentable over Cooper (US 5,592,508) as applied to claims 1 and 9, and in view of Van Ryzin (US 6,052,471). These claims depend from independent claims that are believed to distinguish over Cooper. Since Van Ryzin does not provide the elements missing from Cooper with respect to the independent claims, the rejection should be withdrawn.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-373-6972) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-0439.

Respectfully submitted,

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11/24/2003

By



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 24 day of November, 2003.

Name

Candis B. Buending

Signature

